## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA VALDOSTA DIVISION

KENNY DAVIS, :

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Petitioner, :

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v. : Civil Action No.

7:06-CV-3 (HL)

DWIGHT HAMRICK, Warden, :

:

Respondent.

:

ORDER

Before the Court is a Report and Recommendation (Doc. 18) from United States Magistrate Judge Richard L. Hodge that recommends granting Respondent's Motion to Dismiss Petition as Untimely and/or for Lack of Exhaustion (Doc.9) and denying Petitioner's Motion for Voluntary Dismissal (Doc. 17). No objections have been filed. Nevertheless, Pursuant to 28 U.S.C. § 636, the Court has thoroughly considered Petitioner's Habeas Corpus and Motion to Dismiss, Respondent's Motion to Dismiss, and the Recommendation.

As fully explained by Judge Hodge, Petitioner's Habeas Corpus is both unexhausted and untimely. Furthermore, because the timeliness defect in the Petition will not be cured by further action, the Court rejects Petitioner's attempt to have his Habeas Corpus dismissed without prejudice in order to fully exhaust his state remedies. Therefore,

Judge Hodge's Report and Recommendation is accepted, Respondents Motion to Dismiss Petition as Untimely and/or for Lack of Exhaustion is granted, and Petitioner's Motion for Voluntary Dismissal is denied.

**SO ORDERED**, this the 31st day of January, 2007.

/s/ Hugh Lawson

**HUGH LAWSON, Judge** 

SCS